

PLEASE NOTE: In most BUT NOT ALL instances, the page and line numbering of bills on this web site correspond to the page and line numbering of the official printed version of the bills.

REFERENCE TITLE: **land use regulations; compensation**

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
First Regular Session  
2005

## **HB 2146**

Introduced by  
Representative Gray C

**AN ACT**

**AMENDING TITLE 33, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 14; RELATING TO PRIVATE PROPERTY.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 33, Arizona Revised Statutes, is amended by adding  
3 chapter 14, to read:

4 CHAPTER 14

5 LAND USE REGULATIONS AFFECTING PROPERTY VALUES

6 ARTICLE 1. COMPENSATION FOR REDUCED PROPERTY VALUE

7 33-1601. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "GOVERNMENTAL ENTITY" MEANS THIS STATE, A COUNTY, CITY, CHARTER  
10 CITY OR TOWN OR ANY BOARD, COMMISSION, COUNCIL, DEPARTMENT OR OTHER AGENCY OR  
11 INSTRUMENTALITY OF THE STATE OR A COUNTY, CITY, CHARTER CITY OR TOWN.

12 2. "LAND USE REGULATION" INCLUDES:

13 (a) ANY STATUTE, ORDINANCE, RULE, REGULATION OR ORDER THAT REGULATES  
14 THE USE OF PRIVATE REAL PROPERTY.

15 (b) A CITY OR TOWN GENERAL OR SPECIFIC PLAN, A COUNTY COMPREHENSIVE  
16 PLAN OR ANY ZONING ORDINANCE.

17 3. "OWNER" MEANS A PERSON WHO HAS LEGAL OR EQUITABLE TITLE TO PRIVATE  
18 REAL PROPERTY, OR ANY INTEREST IN PRIVATE REAL PROPERTY.

19 4. "PRIVATE REAL PROPERTY" MEANS AN INTEREST IN REAL PROPERTY THAT IS  
20 RECOGNIZED BY COMMON LAW, INCLUDING APPURTENANT WATER RIGHTS, THAT IS NOT  
21 OWNED BY THE UNITED STATES, THIS STATE OR A POLITICAL SUBDIVISION OF THIS  
22 STATE AND THAT IS NOT LOCATED WITHIN THE EXTERIOR BOUNDARIES OF AN INDIAN  
23 RESERVATION.

24 33-1602. Compensation for reduction in property value and other  
25 remedies

26 A. IF A GOVERNMENTAL ENTITY ENACTS OR ENFORCES A NEW LAND USE  
27 REGULATION, OR ENFORCES A LAND USE REGULATION ENACTED BEFORE THE EFFECTIVE  
28 DATE OF THIS SECTION, THAT RESTRICTS THE USE OF PRIVATE REAL PROPERTY AND HAS  
29 THE EFFECT OF REDUCING THE FAIR MARKET VALUE OF THE PROPERTY, THE OWNER OF  
30 THE PROPERTY IS ENTITLED TO JUST COMPENSATION.

31 B. JUST COMPENSATION IS EQUAL TO THE REDUCTION IN THE FAIR MARKET  
32 VALUE OF THE PRIVATE REAL PROPERTY RESULTING FROM THE ENACTMENT OR  
33 ENFORCEMENT OF THE LAND USE REGULATION AS OF THE DATE THE OWNER MAKES WRITTEN  
34 CLAIM FOR COMPENSATION UNDER SECTION 33-1603.

35 C. IN LIEU OF PAYMENT OF COMPENSATION UNDER THIS ARTICLE, THE  
36 GOVERNING BODY OF THE GOVERNMENTAL ENTITY MAY MODIFY, REMOVE OR NOT APPLY THE  
37 LAND USE REGULATION TO ALLOW THE OWNER TO USE THE PROPERTY FOR A USE  
38 PERMITTED AT THE TIME THE OWNER ACQUIRED THE PROPERTY.

39 D. THE REMEDIES CREATED BY THIS ARTICLE ARE IN ADDITION TO ANY OTHER  
40 REMEDY UNDER LAW, THE CONSTITUTION OF ARIZONA OR THE CONSTITUTION OF THE  
41 UNITED STATES, AND IS NOT INTENDED TO MODIFY OR SUPERSEDE ANY OTHER REMEDY.

42 33-1603. Claims; process

43 A. FOR CLAIMS ARISING FROM LAND USE REGULATIONS ENACTED BEFORE THE  
44 EFFECTIVE DATE OF THIS SECTION, A WRITTEN CLAIM FOR COMPENSATION UNDER THIS  
45 ARTICLE MUST BE MADE ON OR BEFORE THE LATER OF:

46 1. JANUARY 1, 2008.

1           2. TWO YEARS AFTER THE DATE THE GOVERNMENTAL ENTITY APPLIES THE LAND  
2 USE REGULATION AS AN APPROVAL CRITERION TO A LAND USE APPLICATION SUBMITTED  
3 BY THE PROPERTY OWNER.

4           B. FOR CLAIMS ARISING FROM LAND USE REGULATIONS ENACTED ON OR AFTER  
5 THE EFFECTIVE DATE OF THIS SECTION, A WRITTEN CLAIM FOR COMPENSATION UNDER  
6 THIS ARTICLE MUST BE MADE ON OR BEFORE THE LATER OF:

7           1. TWO YEARS AFTER THE ENACTMENT OF THE LAND USE REGULATION.

8           2. THE DATE THE PROPERTY OWNER SUBMITS A LAND USE APPLICATION IN WHICH  
9 THE LAND USE REGULATION IS AN APPROVAL CRITERION.

10          C. IF THE LAND USE REGULATION CONTINUES TO BE ENFORCED AGAINST THE  
11 PROPERTY ONE HUNDRED EIGHTY DAYS AFTER THE OWNER OF THE PROPERTY MAKES A  
12 WRITTEN CLAIM FOR COMPENSATION UNDER THIS SECTION:

13          1. JUST COMPENSATION BECOMES DUE TO THE PROPERTY OWNER.

14          2. THE PROPERTY OWNER HAS A CAUSE OF ACTION FOR JUST COMPENSATION  
15 PURSUANT TO THIS ARTICLE IN SUPERIOR COURT IN THE COUNTY IN WHICH THE  
16 PROPERTY IS LOCATED. THE OWNER IS ENTITLED TO REASONABLE ATTORNEY FEES AND  
17 COSTS INCURRED IN AND ASSOCIATED WITH COLLECTING THE COMPENSATION.

18          D. A CITY, TOWN, COUNTY OR STATE AGENCY MAY ADOPT OR APPLY PROCEDURES  
19 FOR PROCESSING CLAIMS UNDER THIS ARTICLE, BUT:

20          1. THE PROCEDURES MAY NOT ACT AS A PREREQUISITE TO FILING OF A  
21 COMPENSATION CLAIM UNDER THIS SECTION.

22          2. THE FAILURE OF A PROPERTY OWNER TO FILE AN APPLICATION FOR A LAND  
23 USE PERMIT WITH A CITY, TOWN OR COUNTY SHALL NOT SERVE AS GROUNDS FOR  
24 DISMISSAL, ABATEMENT OR DELAY OF A COMPENSATION CLAIM UNDER THIS SECTION.

25          E. CLAIMS UNDER THIS ARTICLE ARE PAYABLE FROM MONIES, IF ANY,  
26 SPECIFICALLY ALLOCATED BY THE LEGISLATURE OR THE GOVERNING BODY OF THE  
27 GOVERNMENTAL ENTITY FOR PAYING CLAIMS UNDER THIS ARTICLE. IF A CLAIM IS NOT  
28 PAID WITHIN TWO YEARS AFTER THE DATE ON WHICH IT ACCRUES, THE GOVERNMENTAL  
29 ENTITY SHALL ALLOW THE OWNER TO USE THE PROPERTY AS PERMITTED AT THE TIME THE  
30 OWNER ACQUIRED THE PROPERTY.

31       33-1604. Exclusions

32       THIS ARTICLE DOES NOT APPLY TO LAND USE REGULATIONS:

33       1. RESTRICTING OR PROHIBITING ACTIVITIES COMMONLY AND HISTORICALLY  
34 RECOGNIZED AS PUBLIC NUISANCES UNDER COMMON LAW. THIS PARAGRAPH SHALL BE  
35 CONSTRUED NARROWLY IN FAVOR OF COMPENSATION UNDER THIS ARTICLE.

36       2. RESTRICTING OR PROHIBITING ACTIVITIES FOR THE PROTECTION OF PUBLIC  
37 HEALTH AND SAFETY, SUCH AS FIRE AND BUILDING CODES, HEALTH AND SANITATION  
38 REGULATIONS, SOLID OR HAZARDOUS WASTE REGULATIONS, POLLUTION CONTROL  
39 REGULATIONS AND FLOODPLAIN REGULATIONS.

40       3. RESTRICTING OR PROHIBITING THE USE OF PRIVATE REAL PROPERTY FOR THE  
41 PURPOSE OF SELLING, PROMOTING OR EXHIBITING OBSCENITY, PORNOGRAPHY OR NUDITY  
42 IN COMPLIANCE WITH THE REQUIREMENTS OF THE CONSTITUTION OF ARIZONA AND THE  
43 CONSTITUTION OF THE UNITED STATES.

44       4. THAT ARE REQUIRED TO COMPLY WITH FEDERAL LAW OR STATE LAW.

45       5. THAT WERE ENACTED BEFORE THE DATE OF ACQUISITION OF THE PRIVATE  
46 REAL PROPERTY BY THE CURRENT OWNER, OR A MEMBER OF THE CURRENT OWNER'S FAMILY

1 WHO OWNED THE PROPERTY IMMEDIATELY BEFORE THE CURRENT OWNER ACQUIRED OR  
2 INHERITED THE PROPERTY. FOR THE PURPOSES OF THIS PARAGRAPH, "FAMILY"  
3 INCLUDES CURRENT OR FORMER SPOUSES AND INDIVIDUALS, OR A TRUST, ESTATE,  
4 CORPORATION, PARTNERSHIP, JOINT VENTURE OR SIMILAR ENTITY OR COMBINATION OF  
5 ENTITIES, IF THE INDIVIDUALS OR AT LEAST EIGHTY PER CENT OF THE  
6 BENEFICIARIES, SHAREHOLDERS, PARTNERS OR JOINT VENTURERS SHARE A FAMILY  
7 RELATIONSHIP AS PARENTS OR ANCESTORS OF PARENTS, CHILDREN OR DESCENDANTS OF  
8 CHILDREN, SIBLINGS, COUSINS OF THE FIRST DEGREE, AUNTS, UNCLES, NIECES OR  
9 NEPHEWS OF THE FIRST DEGREE, SPOUSES OF ANY OF THESE LISTED RELATIVES AND  
10 LISTED RELATIVES BY THE HALF-BLOOD OR ADOPTION.

11 6. CONSTITUTING A FORMAL EXERCISE OF THE POWER OF EMINENT DOMAIN.

12 7. REGULATING WATER SAFETY, HUNTING, FISHING OR THE POSSESSION OR  
13 CONTROL OF NONINDIGENOUS OR EXOTIC WILDLIFE.

14 8. AN ACTION TAKEN PURSUANT TO LAW TO PREVENT THE WASTE OF GROUNDWATER  
15 OR PROTECT THE RIGHTS OF OWNERS OF INTEREST IN GROUNDWATER.

16 9. THE APPRAISAL OF PROPERTY FOR PURPOSES OF AD VALOREM PROPERTY  
17 TAXATION OR ASSESSMENTS.